

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications
and Energy on its own motion, pursuant to G.L. c. 159,
§ 105 and G.L. c. 164, § 76, to investigate increasing the
penetration rate for discounted electric, gas and telephone
service.

D.T.E. 01-106

COMMENTS OF VERIZON MASSACHUSETTS

Verizon Massachusetts (“Verizon MA”) hereby responds to the Hearing Officer’s Briefing Question dated June 19, 2003, seeking comments regarding legal issues raised by utility participation in a computer matching program that would have utilities electronically transfer all residential accounts to the Executive Office of Health and Human Services (“EOHHS”) for the sole purpose of identifying customers eligible for discounted electric, gas and telephone services in Massachusetts. As demonstrated below, there are not only clear legal impediments, but also significant administrative, operational, and competitive issues involved in the establishment of such a program.

First, the electronic transfer of *all* residential customers’ account information to the EOHHS raises serious privacy concerns. All customers, including those who receive low-income assistance and would qualify for discounted utility services, have a reasonable expectation of privacy that personal information (*i.e.*, name, address, telephone number, Social Security number, etc.) provided to utilities will *not* be shared with government agencies without obtaining the customer’s permission.

Second, releasing all residential customer account information to the EOHHS would conflict with Verizon's corporate privacy policy. That policy is enforced by the Federal Trade Commission ("FTC") pursuant to its authority under Section 5 of the FTC Act, which prohibits unfair or deceptive practices. 15 U.S.C. §45. Based on Verizon's privacy guidelines, customers should be given an opportunity to "opt out" of Verizon MA's disclosure of their personal data (including name, address or other information) to the EOHHS.

Third, Verizon MA is aware of no jurisdiction where utilities provide all residential customer account information to a government agency to determine eligibility under an automatic enrollment program for discounted services. Contrary to claims made by MASSCAP,¹ New York and Texas do not require that Verizon share its entire customer account information with state agencies as part of its LifeLine telephone assistance program. Indeed, in both states, Verizon receives verifying data from the appropriate state agencies regarding recipients of public assistance benefits who are eligible for LifeLine services.

Fourth, the electronic transfer of customer account data under a computer matching program raises considerable administrative, operational, and competitive issues that are unique to Verizon MA and its customers. Because of the size of Verizon MA's customer base, such a program would be a complex and costly undertaking. Moreover, unlike electric and gas utilities, Verizon MA provides its customers with a wide range of choices for local services, including packaged calling plans and optional features and

¹ MASSCAP is the acronym for the Massachusetts Community Action Program Directors Association and Massachusetts Energy Directors Association, collectively. MASSCAP submitted comments on this Briefing Question on June 27, 2003.

functionality, which are offered in a highly competitive telecommunications market. Because some service offerings are not available to customers receiving LifeLine assistance, an automatic enrollment program would result in some eligible customers being removed from their existing services and to be placed in the Lifeline assistance program. This would, in effect, deprive customers of the ability to choose the Verizon MA services they desire.

Fifth, the costs of implementing and maintaining an automatic enrollment and computer matching program must be assessed and balanced against the potential benefits to consumers. As indicated in the most recent reports issued by the Federal Communications Commission (“FCC”), both the overall and low-income telephone penetration rates for Massachusetts are among the highest in the nation for 2002. Since that time, the value of LifeLine assistance benefits has increased by approximately 27 percent as a result of recent rate changes made by Verizon MA. Consequently, no further stimulus – such as an automatic enrollment program - is necessary to make customers aware of the LifeLine program or incent them to opt for LifeLine services. Accordingly, there is no basis for modifying Verizon MA’s existing LifeLine program, and no evidence that it would be improved by an electronic transfer and computer matching process for automatic enrollment.

Finally, no evidentiary record has been established in this proceeding regarding an automatic enrollment and computer matching program. The Department must conduct a formal investigation before affecting any change in existing discounted utility services, and must afford parties a full and fair opportunity to present their case on such matters.

DISCUSSION

On June 19, 2003, the Department requested comments relating to the following briefing question in this proceeding:

Please discuss any legal impediment and legal justification for utility participation in a computer matching program with EOHHS that would involve the electronic transfer of all residential accounts to EOHHS for the sole purpose of identifying customers eligible for discounted service with subsequent destruction of non-matching data.

Notice, at 1 (June 19, 2003). As explained below, a computer matching program that involves the electronic transfer of customer data raises a host of issues for Verizon MA and its customers.

A. A Computer Matching Program That Would Have Utilities Electronically Transfer All Residential Customer Accounts to the EOHHS Raises Serious Privacy Concerns.

As the Attorney General and various utilities recognize, the customer privacy issues raised by a computer matching program that involves the electronic transfer of utility customer information raises serious legal issues. Attorney General Comments, at 3-4; *see also* Massachusetts Electric Comments, at 2-3; NStar Comments at 4-6, 9-10; Western Massachusetts Electric Comments, at 2-4. As described in the Department's *Notice*, utilities electronically transfer to the EOHHS customer information for *all* residential accounts.² The EOHHS would then match that data against its list of recipients of public assistance benefits to determine eligibility status for discounted utility services. A computer match would presumably result in automatic enrollment for the customer.

² As noted below, the formatting of the data required for this electronic transfer is unclear. Verizon MA expects that each utility's customer database utilizes a different format that would require substantial programming efforts by EOHHS to ensure system compatibility.

Chapter 214, Section 1B of Massachusetts General Laws provides that

A person shall have a right against unreasonable, substantial or serious interference with his privacy. The superior court shall have jurisdiction in equity to enforce such right and in connection therewith to award damages.

Sharing personal customer data - which may include name, address, telephone number, social security number, and more - may be considered a violation of one's privacy rights, absent the express written permission of the individual to disclose such information. As stated by the Massachusetts Superior Court,

In an age of computer databases and electronic retrieval of sensitive information, the public is justly concerned that the privacy of personal information be protected. The public should be able to have confidence that personal information remain private.

Commonwealth of Massachusetts v. Source One Associates, Inc. et al, 1999 Mass. Super. LEXIS 402, at *42 (Oct. 14, 1999).

The issue of whether one's privacy rights have been violated depends on whether a reasonable expectation of privacy exists.³ Massachusetts courts have held that the use of name, address, date of birth, and social security number information may constitute an unwarranted invasion of privacy. *Doe v. Registrar of Motor Vehicles*, 26 Mass. App. Ct. 415, 528 N.E.2d 880 (1988).

³ Although the Massachusetts Constitution does not expressly refer to a right to privacy, it is inferred in the broad language of specific provisions of the Constitution (*i.e.*, Articles 1, 14, and 16 of the Massachusetts Declaration of Rights of the Massachusetts Constitution). The protection afforded by those provisions is comparable to that provided by the Fourteenth Amendment to the United States Constitution.

Utility customers have a reasonable expectation of privacy that their personal information (*i.e.*, name, address, telephone number, Social Security number, etc.)⁴ would *not* be shared with government agencies without obtaining their permission.⁵ This is equally true for those customers who are also applicants and/or recipients of public assistance benefits qualifying them for discounted utility services.⁶ Moreover, Verizon MA customers subscribing to non-published service would presumably have an even *greater* expectation of privacy that their listing information (*i.e.*, name, address and telephone number) would not be disclosed under *any* circumstances.⁷ MA .D.T.E. Tariff No. 10, Pt. A, Sec. 5.6.

⁴ It should be noted that Verizon MA does not require a customer's Social Security number as a condition of providing service and, therefore, that information is not available for all Verizon customers.

⁵ In addition, there may also be competitive consequences for Verizon MA if the proposed computer matching program is adopted. For example, customers concerned about the sharing of their personal data with a government agency may choose an alternative carrier that is not subject to the same requirements as Verizon MA because of its LifeLine program.

⁶ Applicants and recipients of public assistance would also have a reasonable expectation of privacy regarding the disclosure of personal information to those outside of the governmental agency administering and dispensing their associated benefits. For example, two EOHHS agencies - the Department of Transitional Assistance ("DTA") and the Department of Medical Assistance ("DMA") – are obligated to maintain the confidentiality of customer (client) information under Massachusetts law. Courts have permitted access to public assistance records to the governing agency only for purposes directly connected with the administration of such public assistance. *Finance Committee of Falmouth v. Falmouth Board of Public Welfare*, 345 Mass. 579, 188 N.E.2d 848 (1963). Therefore, public welfare agencies may be precluded from providing client data to utilities absent express permission from the client to release such information. *See e.g.*, Mass. General Laws c. 271, § 43, c. 118A, § 6, c. 118E, § 49, and c. 66, § 17A.

⁷ Some utilities also suggest that the electronic transfer of customer data to the EOHHS may subject that data to public disclosure if a request is made pursuant to the Massachusetts Public Records Law [Mass. General Laws c. 66, § 10 and c. 4, § 7(26)]. Mass Electric Comments, at 3; NStar Comments, at 3, 7; Western Electric Comments, at 3. Those companies question whether a confidentiality agreement would protect the data under the circumstances. Western Electric further comments that EOHHS' destruction of non-matching data should not be "done for the purpose of avoiding the provision of the data" under the Public Records Law. *Id.* Verizon MA disagrees with the suggestion that EOHHS would destroy customer data, rather than return such data to the utility.

B. The Electronic Transfer and Computer Matching Program Conflict with Verizon's Privacy Principles Governing Disclosure of Customer Data.

Verizon has established corporate privacy principles that govern, *inter alia*, the Company's treatment of customer data. Under those privacy guidelines, Verizon is committed to protecting customer information and providing customers with the ability to control how and if their information is disclosed. The electronic transfer of customer information to the EOHHS for computer matching conflicts with those guidelines to the extent that Verizon MA's customers are not given an opportunity to "opt out" of disclosing their personal data.

The enforcement of privacy commitments made by corporations to customers, such as those embodied in Verizon's privacy principles, is a key part of the FTC's privacy program. The FTC's objective is to prevent corporations from misrepresenting in any manner, expressly or by implication, the extent to which they maintain and protect the security, confidentiality, or integrity of any personal information⁸ collected from or about consumers.

The FTC informs customers about various corporate privacy policies (including Verizon's privacy principles) by posting them to its website [www.ftc.gov/privacy/privacyinitiatives/promises.html]. The FTC has also relied on its

⁸ The FTC broadly defines "personal information" as identifiable information from or about an individual. This includes, but is not limited to, the following: (1) a first and last name; (2) a home or other physical address, including street name and name of city or town; (3) an e-mail address or other online contact information, such as instant messaging user identifier or a screen name that reveals an individual's email address; (4) a telephone number; (5) a Social Security number; (6) credit and/or debit card information, including credit and/or debit card number and expiration date; (7) an Internet Protocol ("IP") address or host name that identifies an individual; (8) a persistent identifier, such as a customer number held in a "cookie" or processor serial number that is combined with other available data that identifies an individual; (9) date of birth, academic, occupational, athletic, or extracurricular interests, racial or ethnic background, or religious affiliation; or (10) any other information from or about an individual that is combined with those listed above.

authority under Section 5 of the FTC Act, which prohibits unfair or deceptive practices, to bring a number of cases against companies in an effort to enforce promises made in corporate privacy statements. 15 U.S.C. §45. Accordingly, should Verizon fail to uphold its privacy guidelines by disclosing Massachusetts customers' personal data to EOHSS, Verizon MA – like other companies - would possibly face action by the FTC to enforce privacy promises made to customers.

C. No Other Jurisdiction Requires Company Disclosure of Account Information for All Residential Customers To Determine Eligibility for Discounted Utility Programs.

In its comments, MASSCAP states that “[o]ther states have used similar matching programs to automatically enroll eligible households into discount rate programs (e.g., Texas and New York) and there have been no legal challenges of those programs.” MASSCAP Comments, at 3. MASSCAP’s claims are unfounded.

The electronic transfer and computer matching program proposed in Massachusetts is not comparable to other state plans, and in particular is not similar to Verizon’s LifeLine programs in New York and Texas. In both states, Verizon *receives* information from the appropriate state agency regarding recipients of public assistance benefits, which the Company compares to its customer lists. In fact, Verizon is unaware of any state where telephone companies are required to disclose account information relating to *all* residential customers to a state agency for computer matching purposes in connection with an automatic enrollment program for LifeLine services.

For example, under the automatic enrollment program in New York, the Office of Temporary and Disability Assistance (“OTDA”) provides Verizon New York (“Verizon NY”) with information regarding the recipients of designated government

assistance and benefit programs pursuant to the terms of a confidentiality agreement.⁹ The information is made available upon the voluntary written consent of recipients of designated government assistance and benefit programs, and is used solely by Verizon NY to conduct an automatic enrollment customer outreach and revalidation program for LifeLine services.

Verizon NY does not now – and never did – provide the OTDA or any other such agency with all residential customer account data, as MASSCAP suggests. MASSCAP Comments, at 2-3. Moreover, a notification letter is sent to eligible customers prior to automatic enrollment, giving them the opportunity to “opt out” if they so desire.¹⁰ Thus, the New York program does not raise the same privacy issues and, therefore, would not be subject to the same legal challenges as the proposed Massachusetts program described above.

Accordingly, should the Department conduct an investigation in the future to determine whether an automatic enrollment program for discounted telephone, electric and gas services is necessary and appropriate in Massachusetts, the New York automatic enrollment and revalidation program¹¹ is an approach that would mitigate the significant

⁹ Similarly, a confidentiality agreement exists between Verizon NY and the third-party vendor (*i.e.*, mail-house) responsible for sending enrollment letters to customers. In New York, these customer letters are sent under the aegis of the Public Utilities Law Project (“PULP”), a state consumer advocacy group.

¹⁰ If an existing Verizon NY customer with basic service does *nothing* upon receipt of that letter, the eligible customer is *automatically* added to Verizon NY’s list of LifeLine recipients. By contrast, eligible customers who currently subscribe to Verizon NY’s packaged offerings that are not available with LifeLine assistance must “opt in” by affirmatively consenting to a change in their current services in order to receive LifeLine assistance.

¹¹ In New York, the automatic enrollment and revalidation program for LifeLine services is narrowly applied. A stipulated *percentage* of eligible Verizon NY customers are randomly selected on a semi-annual basis, with the total number of automatically enrolled customers capped at 70,000 per year. In addition, all LifeLine subscribers in New York are re-validated on a quarterly basis, and removed from the program if they no longer meet the eligibility requirements.

legal and privacy issues raised by the utility's electronic transfer of all customer information to the EOHHS for computer matching purposes.

D. The Electronic Transfer and Computer Matching Program Raises Many Administrative, Operational and Competitive Issues for Verizon MA and Its Customers.

In addition to raising serious privacy issues, the proposed electronic transfer and computer matching program presents considerable administrative, operational and competitive issues for Verizon MA and its customers.

With more than two and one-half million residential lines, Verizon MA would undoubtedly be the largest utility - in terms of customer base - to be affected by such a computer matching program. The work effort and costs involved in extracting the necessary data from Verizon MA's comprehensive customer records database and transferring that information to the EOHHS on an electronically compatible basis would be significant. It is also inefficient and ineffective to provide the EOHHS with information regarding Verizon MA's *total* residential customer base when only a limited number of customers are eligible for LifeLine benefits. Sorting that customer information would be time-consuming and costly for the agency.

Because of the many telecommunications services available to consumers from Verizon MA and other local service providers in today's competitive environment, there is considerable churn both in terms of the services selected by Verizon MA's customers and the number of customers migrating to other carriers. This would further complicate the electronic transfer and computer matching process and add to the overall costs of the LifeLine program.

Unlike the electric and gas utilities, Verizon MA offers many calling plans and services, including packaged offerings that provide local services, as well as different

functions and features. Although LifeLine assistance is not available for customers who decide to subscribe to some of those packages, LifeLine assistance eligible customers may choose to subscribe to those services based on their individual calling needs.

An automatic enrollment and computer matching program would interfere with customer choice by imposing LifeLine assistance on Verizon MA customers who have selected other service alternatives, some of which are not available in conjunction with LifeLine assistance.¹² Clearly, it is the customer's prerogative to decline to participate in a discounted utility rate program. A government agency should not determine a customer's telephone service. Giving customers the choice is the only fair way of ensuring that customers continue to decide which Verizon MA services best meet their telecommunications and economic needs.¹³

E. There is No Justification for Requiring an Automatic Enrollment Program for Verizon MA's LifeLine Services.

Verizon MA is committed to support its LifeLine and Link-Up assistance programs, which enable eligible, low-income customers to receive more affordable telephone service and thereby further the public policy goal of universal service. However, the costs of implementing and maintaining an automatic enrollment and computer matching program must be assessed and balanced against the potential benefits to consumers.

¹² For example, as reflected in MA DTE Tariff No. 10, the following Verizon MA packaged offerings are unavailable with LifeLine assistance: Local Package; Local Package Standard; Local and Toll Package; Local Package Metropolitan; Local Package Standard Metropolitan; Local Package Plus; Local Package Basic; Freedom; and Freedom Extra. Similar service restrictions apply in connection with Verizon NY's LifeLine assistance program.

¹³ This would also mitigate potential negative competitive impact, *e.g.*, the migration of Verizon MA's customers – who are forced to “unsubscribe” their chosen service package – to packaged service offerings available from alternative providers that do not offer LifeLine assistance.

As indicated above, an automatic enrollment program can be extremely costly and difficult to implement and administer.¹⁴ It requires a continuous commitment of resources by participating social service agencies to ensure the provision of accurate lists to telephone, gas and electric companies. Likewise, the companies must undertake considerable programming work to enable their systems to process those agency database lists for matching purposes and administer the automatic enrollment program on an ongoing basis.

There is no evidence to demonstrate that automatic enrollment would increase overall LifeLine penetration levels in Massachusetts. In fact, such a program would not promote competition, and can be very expensive and difficult to implement and administer. A far more effective way to promote Verizon MA's LifeLine and Link-Up assistance programs is through the Company's customer outreach efforts and through participating social service agencies, which provide information on such programs (*e.g.*, Verizon brochures and applications) directly to qualified consumers. That approach ensures that the consumer's decision to participate in such assistance programs is based on an *affirmative* customer choice - and not a *presumption* of a customer's willingness to participate.

Likewise, a change in the existing LifeLine assistance program in Massachusetts is unwarranted. The most recent FCC reports indicate that Verizon MA's overall telephone subscribership and low-income telephone penetration rates in Massachusetts

¹⁴ It should be noted that costs incurred by Verizon to administer the LifeLine program in New York are recoverable under the state's Targeted Access Fund. Should the Department determine - after a full investigation of this issue - that an automatic enrollment program is justified, any costs incurred by Verizon MA should be fully recoverable.

are among the highest in the nation.¹⁵ That data shows that there is no problem in need of fixing by changes in the current LifeLine program.

Specifically, the FCC report on nationwide telephone subscription rates shows that the telephone subscribership level in Massachusetts for 2002 was 97.5 percent. *See* FCC Industry Analysis Division Report, Table 3 - "Percentage of Households with a Telephone by State", released April 2003. This exceeds both the New York's 2002 average subscribership level of 96.3 and the national average of 96.2 percent for 2002. *Id.* Based on this most recent data, Verizon MA ranks 13th in the country in overall telephone subscribership.

Likewise, recent FCC data shows that Verizon MA's telephone penetration among low-income customers in 2002 was 94.4 percent in Massachusetts, as compared with 89.2 percent in New York. *See* FCC Telephone Penetration Report, Table 3, released May 2003. Based on that FCC data, Massachusetts has the fifth highest telephone penetration rate in the country among low-income customers. Thus MASSCAP is simply incorrect in asserting that New York has a higher low-income subscription level. MASSCAP Comments, at 4.

In addition, the value of LifeLine assistance benefits to consumers has increased by approximately 27 percent as a result of recent rate changes made by Verizon MA. In particular, Verizon MA's LifeLine program currently provides a monthly benefit of \$18.39 (up from \$14.50) in Massachusetts. *See* Verizon MA Comments, at 3 (filed January 24, 2002). This is based on the current Massachusetts monthly rate of \$18.80 for residence measured service ("1MR"), which consists of \$12.36 for 1MR and \$6.44 for

¹⁵ The applicable FCC reports are available on the FCC website [www.fcc.gov/web/iatd/lec.html].

the End User Common Line charge (“EUCL”).¹⁶ Thus, Verizon MA’s LifeLine benefits are among the most generous in the country.

Verizon MA’s LifeLine and Link-Up assistance programs currently achieve the Department’s objectives, and there is no basis for modifying Verizon MA’s LifeLine program by establishing an electronic transfer and computer matching process for automatic enrollment.¹⁷ There are no additional benefits of introducing such a program, which will result in additional costs for the EOHHS and other state agencies, Verizon MA, and its customers. Moreover, the Department cannot affect any change in existing discounted utility service programs until and unless a formal investigation is conducted, at which time companies would be given a full and fair opportunity to present their case and an evidentiary would be established.

CONCLUSION

While the concept of automatic enrollment may appear to further the Department’s goal of increasing penetration rates for discounted utility services in Massachusetts, it raises serious privacy concerns, as well as administrative, operational, and cost recovery issues for state agencies, utilities, and their customers. Such issues must be fully addressed in an adjudicatory proceeding before the Department can even consider whether to implement an automatic enrollment program and the ramifications of the electronic transfer and computer matching process.

¹⁶ The monthly rate in Massachusetts for residence flat-rated (unlimited) service (“1FR”) is \$25.74 for, which consists of \$19.30 for 1FR and \$6.44 for the EUCL.

¹⁷ While Mass. General Laws c. 164, § 1F explicitly provides for an automatic enrollment program for electric and gas utilities, there is comparable statute applicable to telecommunications carriers. MASSCAP Comments, at 3; Attorney General Comments, at 2. Thus, the Department’s statutory authority to implement an automatic enrollment program for Verizon MA may be in question.

Moreover, as demonstrated above, Verizon MA's overall telephone penetration rates, as well as those for low-income subscribers, are among the highest nation based on recent FCC reports. Therefore, there is no need to modify Verizon MA's existing LifeLine telephone assistance program.

Respectfully submitted,

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Dated: July 9, 2003